New Nouveau Brunswick CANADA

News Release

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N.B. Human Rights Commission

Mandatory retirement case headed for Supreme Court of Canada (07/03/29)

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FREDERICTON (CNB) - The Supreme Court of Canada issued a decision today granting the New Brunswick Human Rights Commission's application for leave to appeal in the case of New Brunswick Human Rights Commission v. Potash Corporation of Saskatchewan Inc. This case deals with the section of the Human Rights Act that allows an employer to have a mandatory retirement policy if there is bona fide retirement or pension plan.

"I am very pleased with this decision," said Gordon Porter, chair of the Human Rights Commission. "Mandatory retirement is an important issue that impacts on the lives of people in New Brunswick. We have also been contacted by other jurisdictions regarding this issue and expect several other commissions to seek intervener status as the case moves forward."

The commission continues to recommend the repeal of the exception that is the subject of this appeal. Only New Brunswick, Newfoundland and Nova Scotia have pension plan exceptions that explicitly allow mandatory retirement in certain cases.

The appeal arose out of a human rights complaint filed by Melrose Scott, a miner from Sussex, who claims that the Potash Corporation discriminated against him on the basis of age when it refused to allow him to continue working past the age of 65. The company's position is that their mandatory retirement policy is justified because they have a bona fide pension plan.

This complaint was referred to a Human Rights Board of Inquiry which ruled on a preliminary question of law on the definition of a bona fide retirement or pension plan. The commission argued that the same stringent test that applies to all other exceptions to the Human Rights Act should apply and the board agreed with the commission.

However, the Potash Corporation argued that a less stringent standard should apply and sought a judicial review of the board decision. The board's decision was overturned by the New Brunswick Court of Queen's Bench. The commission's subsequent appeal was refused by the New Brunswick Court of Appeal, with a dissenting opinion from one of the three judges on the panel.

"After extensive consultation with various legal experts and careful consideration of all the options, the commission decided that this case was sufficiently important to warrant an appeal to the Supreme Court of Canada," Porter said. "If the Court of Appeal's interpretation is found to be correct, this case also raises a constitutional issue, as the pension plan exception may then be inconsistent with section 15 of

the Canadian Charter of Rights and Freedoms, which gives a right 'to equal protection and equal benefit of the law without discrimination' based on age."

The commission expects a hearing to be scheduled in the fall of 2007. If the commission is successful, an employer wishing to adopt a mandatory retirement policy in connection with its pension plan would first have to consider the impact on the employee, the adequacy of the pension, and whether the mandatory retirement policy is reasonably necessary for the pension plan's operation.

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